

## **Memorandum of Understanding**

**Between**

**The Gas and Electricity Markets Authority**

**And**

**The Information Commissioner**

### **1. Introduction**

This Memorandum of Understanding (the "MoU") is between the Gas and Electricity Markets Authority (the "Authority") and the Information Commissioner ("the Commissioner"). The Authority is supported by the Office of the Gas and Electricity Markets ("Ofgem").

The purpose of this MoU is to establish a framework for liaison between the Authority and the Commissioner in connection with the smart meter data access and privacy framework, which currently relates to smart meters in Great Britain, but which may be extended to cover other meters that allow remote access to data.

The data access and privacy framework comprises relevant conditions within the electricity and gas supply licences, network operators' licences and obligations in the Smart Energy Code (the "SEC"). The SEC is a new, industry code that sets out the terms for the provision of the Data and Communications Company's<sup>1</sup> smart meter communications service and specifies other provisions that govern the end-to-end management of smart metering.

This MoU is a statement of intent that does not give rise to legally binding obligations on the part of either the Commissioner or the Authority.

### **2. The Role of the Commissioner**

The Commissioner is a Corporation Sole, appointed by Her Majesty The Queen under the Data Protection Act 1998 (DPA), who reports directly to Parliament. The Commissioner's duties are to regulate and enforce compliance with the DPA, Privacy and Electronic Communications Regulations 2003, the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations 2004 and the INSPIRE Regulations 2009.

### **3. The Role of the Authority**

The Authority determines strategy, sets policy priorities and makes decisions on a wide range of regulatory matters in the gas and electricity markets, including price controls and enforcement. The Authority's powers are provided for under the following: Gas Act 1986; Electricity Act 1989; Utilities Act 2000; Competition Act 1998; Enterprise Act 2002; and measures set out in a number of Energy

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<sup>1</sup> The Data and Communications Company (DCC) is a central body that had been established to provide a smart meter communications service. The DCC will offer the means by which energy suppliers, energy network operators and energy efficiency or energy services companies can communicate remotely with smart meters in domestic premises in Great Britain.

Acts. The Authority oversees and provides strategic direction to the Office of Gas and Electricity Markets (Ofgem). Ofgem is a non-ministerial government department whose principal duty is to protect the interests of existing and future consumers.

#### **4. Working Relationship**

This MoU will build on the good working relationship that already exists between the Authority and the Commissioner. This MoU seeks to foster a relationship between the Authority and the Commissioner that is based on:

- a. Being open and transparent;
- b. Working together at all levels, wherever appropriate;
- c. Enabling early engagement on changes to the data access and privacy framework for smart metering, including supply licence conditions, network licence conditions and the Smart Energy Code;
- d. Enabling early engagement on changes to the DPA, and other relevant legislation, that may impact on data access and privacy framework for smart metering;
- e. Highlighting areas of interaction and setting out what each expects of the other, recognising the that each has distinct governance, responsibilities and decision-making arrangements; and
- f. Ensuring lessons are learned and an approach of continuous improvement is pursued.

#### **5. Consultation/cooperation between the Commissioner and the Authority**

The Authority and the Commissioner recognise that it is important they continue to work closely together in respect of all matters pertaining to data access and privacy for smart metering.

In particular, the Commissioner and Authority agree to:

- a. Discuss issues of concern to their respective organisations relating to the data access and privacy framework for smart metering and their respective roles.
- b. Give early notice of any forthcoming legal or regulatory developments originating from the European Union that may impact upon the data access and privacy framework for smart metering.
- c. If the Authority receives a complaint related to smart metering which appears to be related to the DPA or other relevant legislation (insofar as the Authority is able to determine), the Authority will liaise with the Commissioner and refer the matter to him if it deems appropriate.
- d. If the Commissioner receives a complaint related to smart metering (insofar as the Commissioner is able to determine) the Commissioner will liaise with the Authority and refer the matter to him if it deems appropriate.

- e. Consult one another at any an early stage on any issues which concern data access and privacy for smart metering and might have significant implications for consumers and/or the other organisation.
- f. Share (for comment) at an early stage draft documents (such as consultation papers, guidance and briefings) that are linked to data access and privacy for smart metering and may significantly impact on consumers, or the other party's functions.

## 6. Information Sharing

In respect of information obtained by or furnished to the Commissioner for the purposes of his functions under the DPA or the FOIA, it is an offence under section 59 of the DPA for any current or former member of the Commissioner's staff or his agent to disclose such information without lawful authority.

Sub-section 59(2)(e) DPA provides that a disclosure by the Commissioner of information obtained by or furnished to him is made with lawful authority where, having regard to the rights and freedoms or legitimate interests of any person, the disclosure is necessary in the public interest. In addition, sub-section 59(2)(d) DPA provides that a disclosure of information by the Commissioner is made with lawful authority where the disclosure is made for the purposes of any proceedings, whether criminal or civil.

The Commissioner may, at his discretion and in accordance with sub-sections 59(2)(d) of the DPA and/or (e):

- a. disclose any material, information or evidence in its possession that suggests or demonstrates that signatories to the SEC have breached (or are likely to have breached) the DPA and relevant Standard Licence Conditions (in particular Condition 47 of the electricity and condition 41 of gas Standard Licence Conditions) or relevant SEC obligations; and
- b. disclose when it is taking enforcement action, or it is intending to take enforcement action, against a party to the SEC, or other party accessing consumers' smart meter data, in relation to data access and privacy relating to smart meters.

The Authority may, subject to Section 105 Utilities Act 2000 and to the extent permitted by law:

- a. disclose any material, information or evidence in its possession that suggests or demonstrates that a party to the SEC has breached the DPA, or is likely to have breached the DPA.

Information exchanged between the Authority and the Commissioner will only be used for the purpose for which it was exchanged and will not be further disclosed to third parties without the consent of the originating organisation, unless either organisation is required by law to disclose the information it receives.

Where a request for information in relation to data access and privacy concerns relating to smart meters is received by either party under the DPA or FOIA, the recipient of the request will seek the

views of the other party. However, the decision to disclose or withhold the information remains with the recipient party.

#### **7. Review, retention and expiry**

This MoU will continue until such time as either party notifies the other in writing that the notifying party considers that the statutory or other responsibilities of either party in respect of smart metering has changed to such an extent that this MoU is redundant or should be replaced by a new MoU.

The Commissioner and the Authority will monitor the operation of this MoU and will review it from time to time as necessary. Any changes to this MoU identified between reviews may be agreed in writing between the parties. Any issues arising in relation to this MoU will be notified to the point of contact for each party.

Information exchanged will not be retained for longer than is necessary for the purpose for which it has been disclosed. Information will be disposed of/deleted securely in line with each party's respective record management procedures.

#### **8. Designated Contacts**

The following officers will be responsible for the operation of functions under this MoU, exchange of information and communications links. In the event that for any reason a change of designated contact is required then the other party will be notified in writing.

The Authority: Duncan Carter, Policy Analyst  
[REDACTED]

The Commissioner: Adam Stevens, Intelligence Manager, Enforcement  
[REDACTED]

#### **9. Media Enquiries/Public Communications**

The designated contacts may liaise on a case by case basis regarding the rationale for handling media enquiries/public communication where data access and privacy of smart metering is concerned.

#### **10. Disclaimer**

This MoU does not override any otherwise existing legal rights or obligations restricting the Commissioner and the Authority to perform their functions as they see fit and in accordance with any legal requirement. It is expected that each party would seek to avoid where possible any action which it is aware would unduly prejudice the other's position.

#### **11. Signed By**

The Commissioner

Authorised Signature



Name and Title

CHRISTOPHER GRAHAM  
INFORMATION COMMISSIONER

Date 24/9/2014

The Authority

Authorised Signature



Name and Title

DERMOT NOLAN  
CEO

Date

12-9-2014